



Plastics Division

June 3, 2022

Submitted Electronically to www.Regulations.gov

Lorie Schmidt
Associate General Counsel
Solid Waste and Emergency Response Law Office
Office of the General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: Docket ID No. EPA-HQ-OGC-2022-0406; Proposed Consent Decree, Unreasonable Delay Claim Regarding Discarded Polyvinyl Chloride Listing, 87 Fed. Reg. 26,351 (May 4, 2022)

Dear Ms. Schmidt,

The American Chemistry Council's Plastics Division appreciates the opportunity to submit comments on the proposed consent decree in *Center for Biological Diversity v. U.S. Environmental Protection Agency, et al.*, No. 1:21-cv-2210-JCB (D.D.C.).

ACC's Plastics Division represents a diverse set of companies engaged in the business of chemistry, an innovative, \$486 billion enterprise. We work to solve some of the biggest challenges facing our nation and our world and are committed to fostering progress in our economy, environment, and society – including providing solutions for our nation's water infrastructure system. Polyvinyl chloride (PVC) pipe is a durable and affordable solution for water delivery systems especially in underserved communities and jurisdictions grappling with significant system needs.

Prior to the suit, the Center for Biological Diversity (CBD) filed petitions with the U.S. Environmental Protection Agency (EPA or the "Agency") in 2014 requesting that the Agency regulate discarded PVC under the both the Toxic Substances Control Act (TSCA) and the Resource Conservation and Recovery Act (RCRA). EPA denied the TSCA section 21 petition but did not respond to the RCRA petition, indicating that it was still under review.¹ Since the Agency has yet to act on the 2014 RCRA petition, CBD filed the above-referenced suit alleging that EPA has failed to act on the petition within a reasonable time, as required by 42 U.S.C. § 6974(a) (RCRA § 7004(a)). To resolve the suit, EPA agrees, under the terms of the proposed consent decree, to sign a tentative decision granting or denying the CBD's 2014 RCRA petition within 9 months of the date on which the consent decree is executed. The Agency is then required to sign a final decision on the RCRA petition within two years of the consent decree's execution.

¹ *Discarded Polyvinyl Chloride; TSCA Section 21 Petition; Reasons for Agency Response*, 79 Fed. Reg. 64,722 (Oct. 31, 2014).



As a general matter, ACC's Plastics Division supports EPA responding to petitions for rulemaking in a timely manner. In this case, CBD's RCRA petition has been pending with the Agency for over 7.5 years, creating a significant amount of uncertainty for the regulated community. As section 7004(a) of RCRA requires the Administrator to timely resolve petitions for rulemaking, and as timely resolution of this matter will ensure that the CBD RCRA petition does not remain pending over our industry, ACC's Plastics Division does not object to the consent decree.

The CBD RCRA petition should be denied as it reflects a gross misunderstanding of PVC as a material and is replete with errors and misinformation. Given the potential impact of a RCRA listing on a wide breadth of industries, including health care, construction, water transmission and others, EPA must provide sufficient time for the regulated community to address the merits of the CBD RCRA petition in written comments.

We appreciate the EPA's consideration and look forward to providing substantive comments on the Agency's tentative decision on the CBD RCRA petition. Please do not hesitate to contact me for more information or if any questions arise.

Sincerely,

A handwritten signature in black ink, appearing to read "Joshua Baca", with a stylized, cursive script.

Joshua Baca
Vice President Plastics Division
American Chemistry Council